IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19854 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FEJMOHMAD NASIRKHAN SINDHI & 5 - Petitioner(s)

Versus

DEPUTY COLLECTOR-PALANPUR & 1 - Respondent(s)

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Appearance :

MR DK ACHARYA for Petitioner(s) : 1 - 6.

NOTICE SERVED BY DS for Respondent(s) : 1 - 2.

MR M R MENGDE AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/10/2005

ORAL JUDGMENT

1.In this petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Deputy Collector, Palanpur dtd.21/7/2005 in Case No.3 of 2004 under sec.65 of the Bombay Tenancy and Agricultural Lands Act, 1948 in taking over the management of the land in question for 10 years.

2.The land bearing Survey No.252/B, ad-measuring 12 Acres was owned by petitioner Nos.1 to 3 and the said land came to be purchased by the petitioner Nos.6 to 6 herein, ad-measuring 2 Acres, 5 Acres and 5 Acres, respectively, by different registered sale deeds. As the Dy.Collector, Palanpur was of the opinion that the land in question is not cultivated by the

respective parties as well as the original land owners, the proceedings under sec.65 of the Bombay Tenancy Act came to be initiated and after giving opportunity to the original land owners as well as to the subsequent purchasers who have purchased the land in question in the month of July, 2003, the Deputy Collector, Palanpur passed and order taking over the management of the land in question by the State Government for a period of 10 years by holding that the land was not cultivated for the period between 1998-1999 to 2003-2004 by the original land owners as well as the subsequent purchasers. The Dy.Collector, Palanpur has also observed and considered that earlier also the land was kept fallow land for the period from 1987-88 to 1996-97 and the proceedings were initiated under sec.65 of the Act and at that time, considering the submissions on behalf of the original land owners to the effect that they are likely to construct a well and

cultivate the land, the proceedings were dropped. Thus, though opportunity was given to the original land owners, they have not cultivated the land subsequently and as such the Dy.Collector has also observed that the petitioners have failed to cultivate the land in question beyond their control. Being aggrieved by and dissatisfied with the order passed by the Dy.Collector, Palanpur dtd.21/7/2005 in Tenancy Case No.3 of 2004, the petitioners have preferred the present petition under Article 226 of the Constitution of India.

3.Mr.D.K. Acharya, learned advocate appearing on behalf of the petitioners has vehemently submitted that the Dy.Collector, Palanpur has not properly considered the reasons for which the cultivation was not possible and that so far as the period up to 2003 is concerned, the ownership has been changed and subsequent purchasers have cultivated the land in question. It is also further submitted by him

that after the purchase of the land in question by the subsequent purchasers, some crops is shown as cultivation in the revenue record. It is also further submitted that along with the notice, no document on which reliance was placed, were supplied to the petitioners. Relying upon the earlier order passed by the Deputy Collector, by which the proceedings were dropped, it is submitted that in the said order the Dy.Collector has also observed that there are reasons beyond the control of the original land owners by which the cultivation could not be made and the said order has not been considered in its true spirit. He has, therefore, requested to allow the present petition.

4.Per Contra, Mr.M.R. Mengde, learned AGP has submitted that so far as the petitioner Nos.4 to 6 are concerned, they have purchased the land in question after July, 2003 and show cause notice came to be issued under sec.65 of

the Act for the earlier period also and as it was found by the Dy.Collector that though opportunity was given after 1998, the original land owners have not cultivated the land in question for the period between 9/8/1999 and 2003 and therefore, the Dy.Collector is justified in passing the order under sec.65 of the Act and, therefore, it is requested to dismiss the present petition.

5.Heard the learned advocates appearing on behalf of the parties.

6.It is required to be noted that earlier in the year 1998, proceedings were initiated by the Dy.Collector, Pananpur under Sec.65 of the Act and the proceedings were dropped by observing that there were reasons beyond the control of the original land owners for not cultivating the land in question and on assurance given by the original land owners that they will be constructing a well, the proceedings were dropped. It is true that thereafter for the

period between 1998-99 and 2003, no efforts were made by the original land owners for cultivating the land in question. However, it is required to be noted that subsequently the petitioner Nos.4 to 6, being subsequent purchasers, purchased the land in question and it is their case that they have started cultivation in the land in question and in Village Form No.7/12 also some crops are shown. It appears that the Dy.Collector while passing the impugned order has not considered the said material aspect of the matter and has considered the conduct of the original owners. However, it is required to be noted that when the impugned order came to be passed, the ownership is changed and the Dy.Collector is required to consider whether even the subsequent purchasers have cultivated the land in question or not. It appears from the record that the statement of Talati-cum-Mantri has been relied upon by the Dy.Collector nd that

too also behind the back of the petitioners and *prima facie*, it appears that the impugned order to that extent is in breach of the principle of natural justice. Under the circumstances, the matter is required to be remanded to the Dy.Collector for passing an appropriate order afresh in accordance with law and on merits and after holding an inquiry and giving an opportunity of being heard to the petitioners and giving material upon which reliance has been placed.

7. For the reasons stated hereinabove, the impugned order passed by the Dy.Collector, Palanpur dtd.21/7/2005 in Case No.4 of 2004 is hereby quashed and set aside and the matter is remanded to the Dy.Collector, Palanpur for passing appropriate an appropriate order afresh in accordance with law and on merits and to consider that whether there were sufficient cause which prevented the original land owners as well as the subsequent purchasers, from

cultivating the land in question or not and the said reasons were beyond the control of the original land owners or not. The Dy.Collector, Palanpur shall pass appropriate order on remand as aforesaid within a period of SIX MONTHS from the date of receipt of writ of this petition. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R. SHAH,J.)

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